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<i>In the Matter of</i>)	
)	
)	WT Docket No. 01-309
Section 68.4(a) of the Commission's Rules)	RM-8658
Governing Hearing Aid-Compatible)	
Telephones)	
)	

AT&T Wireless Services, Inc. (“AWS”) provides these comments in response to the Commission’s recent notice of proposed rulemaking (“NPRM”)¹ concerning the statutory exemption of mobile telephones from the compatibility or “effective use” requirements of the Hearing Aid Compatibility Act of 1988 (“HAC Act”).² This review is appropriate in light of the HAC Act’s requirement that the Commission “periodically assess” the mobile telephone exemption.³ Indeed, the Commission indicated that even in the absence of an advance in technology, it would undertake a review in order to satisfy the Act’s mandate.⁴ AWS submits that at least one of the statute’s prerequisites to lifting of the exemption – “technological feasibility” – does not exist today. Another,

³ 47 U.S.C. § 610(b)(2)(C).

addressing the economic effect on marketability, cannot be determined in the absence of a technological solution. Nonetheless, AWS believes that the Commission could act in furtherance of the HAC Act's objectives by facilitating a cooperative working group for the exchange of technical information among the hearing aid and telephone industries and consumer groups.

I. The HAC Act Requires That Telephones Provide Effective Use with Hearing Aids That Are Designed to Be Compatible With Such Telephones

The NPRM seeks input on “the extent to which the exemption for public mobile service telephones is still appropriate and whether it needs to be lifted under the statutory standards”⁵ Presently, virtually all telephones – except legacy sets, public and private mobile telephones, and secure telephones – are hearing aid-compatible pursuant to the technical standard for wireline telephones incorporated in the Commission's regulations.⁶ Specifically, these telephones “provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid-compatibility.”

At the time it imposed the HAC requirement, Congress expressly recognized that telephones used with public mobile services “cannot be made HAC today,”⁷ and accordingly exempted them from the requirement. Implementing the HAC Act, the

⁴ *Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons*, First Report and Order, 4 FCC Rcd. 4596, 4600 at ¶ 27 (1989) (“*First Report and Order*”).

⁵ *NPRM* at 2.

⁶ 47 C.F.R. §68.316. *See also* 47 C.F.R. §§68.4, 68.112. Part 68 governs the connection of terminal equipment to the telephone network, and Section 68.316 makes hearing aid-compatibility a condition of equipment registration. In contrast, radio frequency devices such as mobile telephones are subject to the certification requirements of Section 2, Subpart J.

⁷ S. Rep. No. 100-674, 100th Cong., 2nd Sess. 1988, at 1351.

Commission explained the need for the exemption “because . . . there was a potential for interference between hearing aids and the mobile telephone . . . making operational compatibility impossible.”⁸

II. AWS Supports the Goals of the Hearing Aid Compatibility Act

As indicated in the *NPRM*, the exemption is to be revoked or otherwise limited “if the Commission determines that--

- (i) such revocation or limitation is in the public interest;
- (ii) continuation of the exemption . . . would have an adverse effect on hearing-impaired individuals;
- (iii) compliance with the requirements of paragraph (1)(B) is technologically feasible for the telephone to which the exemption applies;
- (iv) compliance with the requirements of paragraph (1)(B) would not increase costs to such an extent that the telephones . . . could not be successfully marketed.”⁹

The Commission has tentatively concluded that prongs (1) and (2) would be satisfied by lifting the exemption. AWS agrees that the broad public interest, as well as the well-being of people with hearing disabilities, would be served if mobile telephones and hearing aids were fully compatible. AWS supports making the broadest choice of communications options available to all consumers. As the Commission recognizes, lifting the exemption could, if technically feasible, benefit people with hearing disabilities by facilitating access to digital services and eliminating one hurdle to full participation in economic and social life.

III. Compatibility Through Modifications to Mobile Handsets Is Not Technologically Feasible

Unfortunately there is no known, or presently foreseeable, technical solution that mobile handset manufacturers or wireless carriers can incorporate to ensure that all

⁸ *First Report and Order*, at 4600, ¶ 26.

digital phones are compatible and effectively usable with every hearing aid. Though AWS shares the concerns that motivated the original Petition for Rulemaking filed by the HEAR-IT Now¹⁰ and the Request of the Wireless Access Coalition (“WAC”) to Reopen the Rulemaking Proceeding¹¹ – a desire to ensure access to a valuable and growing technology – the record is devoid of evidence that any technological modification to mobile handsets exists that can resolve the usability problem. The Petition for Rulemaking offers no examples (other than positing whether a reduction in transmitting power, which would require a complete overhaul in the nation’s wireless networks, could reduce interference). The Petition does, however, include a Report from the National Telecom Agency of Denmark, whose proposed solution is modifications in the construction of hearing aids. WAC’s Request voices its concern “that the increasingly digital world is leaving hearing aid and cochlear implant users farther and father behind.”¹² But it does not even suggest that the statutory requirement of “technological feasibility” has been met (nor, indeed, does it reference the requirement).

IV. Working Toward a Solution

Much of the discussion to date has focused the mobile handset. Yet in practice, the issues of usability and compatibility relate to the interaction of *two* devices – the

⁹ 47 U.S.C. § 610(b)(2)(C).

¹⁰ Helping Equalize Access Rights in Telecommunications Now (“HEAR-IT NOW”), Petition for Rulemaking, RM-8658 (filed June 5, 1995) (“*HEAR-IT NOW Petition*”).

¹¹ Wireless Access Coalition, Request to Reopen the Petition for Rulemaking, RM-8658 (filed October 10, 2000) (“*WAC Request*”).

¹² *WAC Request* at 1.

handset and the hearing aid.¹³ Congress expressly recognized this symbiosis is crafting the language of the HAC Act. The mandate provides that telephones must “provide internal means for effective use” with “hearing aids *that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.*” The descriptive clauses reference each other and create a relationship that is mutually interdependent. Telephones must provide effective use with hearing aids that are, themselves, designed to be compatible with telephones.

This language points the most constructive direction for further action. The Commission could assist this relationship by convening an informal working group to assist both industries exchange information and work toward a technical solution. One industry’s participation without the other would ignore the responsibility each has to work toward compatibility. The participation of the Food and Drug Administration, the federal agency with primary regulatory over hearing aids, could also be productive.

AWS, meanwhile, will continue its efforts to educate both its sales and service people, and the general public, about the many options and modifications that are available for people with disabilities. Any disability, as well as the preferred technical or adaptive response, is unique to the individual. Though these efforts do not, themselves, provide a direct solution under the HAC Act, they are essential in providing the widest range of consumer choice and access.

Respectfully submitted,

AT&T Wireless Services, Inc.

By: _____/s/_____

¹³ For a helpful scientific discussion of the components and interaction of the handset and the hearing aid, see the comments of the Telecommunications Industry Association (“TIA”) and the Cellular Telecommunications and Internet Association (filed January 11, 2002).

Douglas I. Brandon
AT&T WIRELESS SERVICES, INC.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, DC 20036
202-223-9222

Karen L. Gulick
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, DC 20036
202-730-1300

Counsel to AT&T Wireless Services, Inc.